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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,437	11/20/2003	Tomaso Vercellotti	2247-114	6624

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EXAMINER

PATEL, NIHIR B

ART UNIT PAPER NUMBER

3743

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/716,437	Applicant(s) VERCELLOTTI ET AL.	
	Examiner Nihir Patel	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 11, 13 and 14 is/are rejected.
- 7) ☒ Claim(s) 9, 12, 15 and 16 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed on March 14th, 2005 have been fully considered but they are not persuasive. The applicant argues that the amended claim 1 contains subject matter ("**the vibration of the tip is modulated with low frequency pulses**") that is nowhere disclosed or suggested by Hood. The examiner disagrees. Hood does disclose a tip that vibrates at a low frequency pulses (see column 19 lines 4-8).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **1 through 5, 6 and 8** are rejected under 35 U.S.C. 102(b) as being anticipated by Hood et al. (US 5,318,570).

Referring to claim 1, Hood discloses an ultrasonic tool that provides a surgical treatment on bone tissue by means of a tip set in vibration at a frequency in the ultrasound range, wherein the vibration of the tip is modulated with low frequency pulses (see column 19 lines 4-8).

Referring to claim 2, Hood discloses a surgical method that is used in orthopedic and neurological surgery (see abstract).

Referring to claim 3, Hood discloses a surgical method that is used in osteotomy treatment.

Art Unit: 3743

Referring to claim 4, Hood discloses a surgical method in that the osteotomy treatment provides bone restriction, breaking the continuity of the skeletal segment, by means of a osteotome tip set in vibration at a frequency in the ultrasound range.

Referring to claim 5, Hood discloses a surgical method that is used in osteoplasty treatments.

Referring to claim 6, Hood discloses a surgical method that is used in osteotomy treatments.

Referring to claim 8, Hood discloses a surgical method that is used on surgical procedures for implantation on an edentulous ridge.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims **7 and 11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hood et al. US Patent No. 5,318,570 in view of Idemoto et al. US Patent No. 4,832,683.

Referring to claims 7 and 11, Hood discloses the applicant's invention as claimed with the exception of providing a surgical method that is used in oral, maxillo-facial and otorhinolaryngological surgical procedures. Therefore it would have been obvious to modify Hood's invention by providing a surgical method that is used in oral, maxillo-facial and otorhinolaryngological surgical procedures in order to make the tool more versatile and reduce the manufacturing cost.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hood et al. US Patent No. 5,318,570 in view of Hugo US Patent No. 6,267,594.

Referring to claim 10, Hood discloses the applicant's invention as claimed with the exception of providing a surgical method that is used for bone tissue incisions for bone sampling in hardly accessible areas. Hugo discloses a medical or dental-medical instrument for material removing working of body tissue and tool for such an instrument that does provide a surgical method that is used for bone tissue incisions for bone sampling in hardly accessible areas. Therefore it would have been obvious to modify Hood's invention by providing a surgical method that is used for bone tissue incisions for bone sampling in hardly accessible areas in order make the tool more versatile.

Claim 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hood et al. US Patent No. 5,318,570 in view of Anctil et al. US Patent No. 5,922,003.

Referring to claims 13 and 14, Hood discloses the applicant's invention as claimed with the exception of providing a surgical method that is used for creation of a bone opening into the maxillary sinus by the ethmoidal crest route without damaging the sinusal membrane, and elevation thereof. Anctil discloses an angled rotary tissue cutting instrument and method of fabricating the same that does provide a surgical method that is used for creation of a bone opening into the maxillary sinus by the ethmoidal crest route without damaging the sinusal membrane, and elevation thereof. Therefore it would have been obvious to modify Hood's invention by providing a surgical method that is used for creation of a bone opening into the maxillary sinus by the ethmoidal crest route without damaging the sinusal membrane, and elevation thereof in order to make the tool more versatile.

Allowable Subject Matter

Claims 9, 12, 15, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272 4791.

NP
May 5th, 2005


Henry Bennett
Supervisor, Patent Examiner
Group 3743